REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LETTERS' PATENT APPEAL NO. 529 OF 2004**

% **Date of Decision** : 3rd August, 2007.

SATISH KUMAR & ANR. .... Appellants.
Through Ms. Avnish Ahlawat, Advocate.

VERSUS

UOI & ORS. .... Respondents.
Through Ms. Anjana Gosain, Advocate.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ? Yes.

3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J:

1. This appeal has been filed impugning the judgment dated 20th February, 2004 passed by the learned Single Judge dismissing the Civil Writ

Petition Nos. 222/2003 and 225/2003. Some other writ petitions were also dismissed by the impugned judgment. However, the petitioners in the said cases have not filed any appeal.

2. The appellants herein have prayed for issue of writ of mandamus against Airport Authority of India, the respondent No. 2 (hereinafter referred to as AAI, for short) to take them on duty, on the post of Junior Assistant (Driver) pursuant to appointment letter dated 13th September, 2002.

3. The appellants claim that they belong to Jat community and “Jats” are included in the list of “Other Backward Classes” (hereinafter referred to as OBCs, for short) as per notification dated 31st May, 2000 issued by the Government of National Capital Territory of Delhi. Thus, they are entitled to appointment to the post of Junior Assistant (Driver) reserved for OBCs. It is the case of the respondent that the appellants cannot be treated as OBCs as “Jats" have not been included in the Central List.

4. It is an admitted case that the appellants had applied for employment as Junior Assistant (Driver). They claimed to be OBCs and also claimed to be entitled to appointment to the posts reserved for OBCs. The

appellants were allowed to appear in the test with the clear stipulation that the candidates would be required to produce the original certificate from competent authority later on. On 7th August, 2000, the appellants appeared and passed the said test and thereafter letter dated 13th September, 2002 was issued. The relevant portion namely clause 13 of the offer of appointment letter reads as under:-

> "In case you belong to Scheduled Caste/Scheduled Tribe/Other Backward Class and Ex-Serviceman category, a certificate/attested copy of certificate from appropriate authority should be sent along with the letter of acceptance. The certificate of SC/ST/OBC should strictly be in the enclosed format as applicable to Central Government employees. <u>You will not be allowed to join the Authority, if the certificate is not in the form as per enclosed format</u>."

5. The appointment letter also stated that it has been issued on information furnished in the application and the personal data and other details given therein. The candiates were required to produce the originals and attested copy of certificate for proof of education, age, experience and community. It was only on fulfilling the above conditions, the appellants were required to report for duty and on failure to comply the said conditions, the

offer of appointment was to be treated as cancelled without any further reference.

6. The appellants produced caste certificate, which was not as per the format specified in clause 13 of the letter of offer of appointment dated 13th September, 2002. The appellants admit that they cannot furnish OBC certificate as per the prescribed format applicable for appointment in the Central Government. Appellants belong to Jat community and said community is not included in the OBC central list. However, they challenged the action of the respondent on the ground that they belong to Jat community, which has been included in the OBC list as per the notification issued by Government of National Capital Territory of Delhi and, therefore, the certificate issued to them by the authority prescribed by the Government of National Capital Territory of Delhi should be, accepted, though the said certificate is not in accordance with the format prescribed by the Central Government and Jat community has not been notified as an OBC community by the Central Government.

7. The Central Government has notified communities that are OBCs

and entitled to employment on posts reserved for OBCs. Jat community is not included in the said list notified by the Central Government. AAI, the respondent is a public sector enterprise belonging to the Central Government and is following the Central Government list with regard to appointment to posts reserved for OBCs. Being a Central Government enterprise, it is bound by the instructions issued by the Central Government in this regard. The Central Government vide its Office Memoramdum dated 13th January, 1995 has stipulated that instructions issued thereunder would govern public sector enterprise, financial institutions and public sector banks, that is, all public sector enterprises. By another Office Memoramdum dated 22nd October, 1993, the Central Government has specified that OBC certificate for appointment to reserved posts should be in terms of the prescribed proforma, which the appellants must produce to be eligible for appointment to the reserved post. There is no specific challenge to the said notifications in the writ petition. We are not examining the vires and validity of the said notifications.

8. As Jat community is not notified in the Central list, therefore, the

appellants cannot claim any right to appointment to posts reserved for OBCs in AAI, a Central Government enterprise, which are required to filled up from persons belonging to the communities mentioned in the Central OBC list.

9. Learned counsel for the appellants, to justify claim of the appellants had relied upon judgment of the Supreme Court in the case of ***Chandigarh Administration and Another versus Surinder Kumar and Others,*** *reported in* ***(2004) 1 SCC 530.*** In the said case, appointments were made by the Chandigarh Administration, a Union Territory. Government of India vide its letter dated 28th July, 1986 had clarified to the said Union Territory that a recognised Scheduled Caste/Schedule Tribe of any other State/Union Territory would also be entitled to benefits and facilities provided for Schedule Castes and Scheduled Tribes in the services under the Union Territory of Chandigarh. The said clarification was applied for all appointments made till 7th September, 1999, when it was decided that no appointments against reserved posts shall be given to candiates who are not residents of Chandigarh and do not have a valid certificate of caste issued by DM/SDM, Chandigarh. The Supreme Court held that the Home Secretary,

Chandigarh Administration who had issued the said clarification effective from 7th September, 1999 could not have over looked the instructions of the Government of India in the letter dated 26th August, 1986. The clarification was not issued by the Government of India and was contrary to the letter dated 26th August, 1986. Reference was made to Article 239 of the Constitution of India and the right of the Government of India to issue instructions for services in the Union Territories. The said decision, therefore, is on its own facts and the edifice is the instruction issued by the Central Government for treating certificates issued by other states and Union Territories as sufficient for the purpose of employment to reserved posts for services in the said Union Territory.

10. As far as appointment of OBCs is concerned, the Central Government has its own list and as per notifications issued by the Central Government, appointments in AAI can only be made from candidates belonging to the communities mentioned in the said list. In several decisions, the Supreme Court has clarified that Schedule Castes and Schedule Tribes belonging to a particular area of the country must be given protection so long

as and to the extent they are entitled to, in order to become equal with others, but Scheduled Castes/Scheduled Tribes who migrate from the State of origin to another State in search of employment or for educational purposes or the like, cannot be treated as persons belonging to Scheduled Castes/Scheduled Tribes of the State to which they migrate. Relying on and referring to the decision in ***Marri Chandra Shekhar Rao versus Dean, Seth G.S. Medical College [(1990) 3 SCC 130]***, it was held by the Hon'ble Supreme Court in the case of ***Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra versus Union of India, [(1994) 5 SCC 244],*** *that-*

> "16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in

State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefit s admissible to a member of the Scheduled Caste of the latter State “for the purposes of this Constitution”. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under :

“He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them... .”

> Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin."

11. ***S. Pushpa and Others versus Sivachanmugavelu and Others, (2005) 3 SCC 1,*** case relates to employment in the Union Territory of Pondicherry and the Central Government instructions issued, were held to be binding and, therefore, the decision in the case of **Marri Chandra Shekhar Rao** (supra) was distinguished. It was also noticed that right from the beginning, Pondicherry Administration had been following the policy whereunder migrant SCs/STs were held eligible for reserved posts in the Pondicherry Administration. The above two decisions are not applicable and have not decided the question raised in the present appeal. This appeal does not pertain to migration of SC/ST or reserved candidates from one State to other and non-compliance of any Central Government notification. The question involved in the present appeal is whether Central Government Public Sector Enterprise, viz. AAI is bound to follow the instructions issued by the Central Government that only candidates belonging to the OBC list

specified by the Central Goernment are eligible for appointment to the reserved posts. In view of the notifications issued by the Central Government, which AAI is bound to follow, we do not find any error in the stand taken by AAI and the decision of the learned Single Judge. As already stated above, the notifications of the Central Government have not been challenged and questioned by the appellants.

12. We may also refer here to the decision of the Supreme Court in the case of ***M.C.D. Versus Veena and Others, (2001) 6 SCC 571*** holding that OBC certificates issued by States other than Delhi does not entitle them to seek employment on a reserved post in MCD. The Supreme Court has repeatedly held and accepted that the Central Government and State Governments can maintain separate lists of communities, eligible for employment to the reserved posts. For appointment to a reserved post, eligibility conditions prescribed must be met. We may also refer to a decision of the Division Bench of this Court in ***Pankaj Versus Union of India [WP (C) No. 7318 of 2005]***, wherein it has been held as under:-

> "9. The first question which arises for consideration is whether the petitioner belongs to OBC category and was therefore entitled to appointment as an LDC in terms of the advertisement published in the 'Emplyment News' for 1-7th November, 2003. It is admitted by learned counsel for the petitioner that Jat community is not included in the Central List (Mandal List) of OBCs. The said list has been prepared by the Central Government for the purpose of appointment in reserved category posts meant for OBC. Appointments to reserved posts for OBCs in the Central Government can only be given to candidates belonging to communities mentioned in the Central List (Mandal List). Candidates belonging to communities included in State Government lists are not eligible"

13. It was also contended by the appellants that their names had been included in the select panel and thus, they cannot be denied employment. This argument cannot be accepted as it is well settled that no one has vested right to be appointed to a post because his name appears in the select panel. Inclusion of name in the select panel does not confer any indelible right to appointment but candidates cannot be denied employment ignoring individual claims on arbitrary grounds or whims and fancies. (See ***State of U.P. Versus Om Prakash, (2006) 6 SCC 474).***

14. In view of the above, we do not find any merit in the present appeal

and the same is accordingly dismissed. However, in the facts and circumstances of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

AUGUST 3, 2007.
VKR/P